Re Lim Lip Sze

HIGH COURT (KUCHING) — ORIGINATING MOTION NO 25-01-95-I
ABDUL KADIR SULAIMAN J
5 MAY 1995

Legal Profession *— Period of pupillage — Whether can commence before formal conferment of law degree — Whether degree must be conferred before pupil can commence reading in chambers — Sarawak Advocates Ordinance (Cap 110) ss 4(1)(cc) & 4(1A)(a)*

The applicant was a law graduate who commenced reading in the chambers of a qualified practitioner under s 4(1A) of the Sarawak Advocates Ordinance (Cap 110) ('the Ordinance') after passing his law examinations but before being conferred his degree. He applied to have the period spent reading in chambers from 3 May 1994 to 12 August 1994 taken into account as part of the period of chambering for the purpose of s 4(1A)(a) of the Ordinance, or alternatively, for an exemption for this period or any other period as a special circumstance under s 4(1B) of the Ordinance. The Sarawak State Attorney General objected on the ground that the period before the formal conferment of the degree could not be counted for the purpose of s 4(1A)(a) because a qualified person must be one conferred with the degree as stipulated by s 4(1)(cc). As to the application for exemption, it was contended that there were no special circumstances to warrant an exemption. In reply, the applicant submitted that separate consideration should be given to the requirement of a law degree under s 4(1)(cc) for admission as an advocate and that of pupillage required under s 4(1A)(a) as they were distinct matters for consideration.

Held, allowing the application:

Section 4(1A) was independent of s 4(1) of the Ordinance as providing another additional qualification for admission as an advocate, over and above the requirement of the latter subsection. Section 4(1A) was silent as to when a person should commence pupillage or reading in chambers for the purpose of calculating the necessary 12-month period under s 4(1A)(a). Therefore, the period spent by the applicant doing his chambering from 3 May 1994 to 12 August 1994 should be counted for the purpose of calculating the period of 12 months required by s 4(1A)(a) of the Ordinance as by that date he had attained his academic qualification in law. In the absence of an express provision in the Ordinance, the applicant should not be penalized for having taken the initiative to read in chambers once the result of his examination was announced and he was successful, but for the formal conferment of the degree upon him at a convocation ceremony.

[Bahasa Malaysia summary

Pemohon ialah seorang siswazah undang-undang yang telah memulakan latihannya dalam kamar seorang pengamal undang-undang yang berkelayakan di bawah s 4(1A) Ordinan Peguambela Sarawak (Bab 110) ('Ordinan itu') selepas beliau lulus peperiksaan undang-undangnya tetapi sebelum dianugerahkan ijazahnya. Beliau telah memohon supaya tempoh latihan dalam kamar yang telah dijalankan dari 3 May 1994 ke 12 Ogos 1994 diambil kira sebagai sebahagian daripada tempoh latihan dalam kamar bagi tujuan s 4(1A)(a) Ordinan itu, ataupun secara alternatif, untuk suatu pengecualian bagi tempoh ini atau sebarang tempoh lain sebagai suatu keadaan khas di bawah s 4(1B) Ordinan itu. Peguam Besar Negeri Sarawak telah membantah atas alasan bahawa tempoh sebelum penganugerahan ijazah itu tidak boleh dikira bagi tujuan s 4(1A)(a) kerana seorang yang berkelayakan mestilah seorang yang telah dianugerahkan dengan ijazah seperti yang diperuntukkan oleh s 4(1)(cc). Berkenaan dengan permohonan untuk pengecualian itu, telah dihujahkan bahawa tidak terdapat keadaan khas yang mewajarkan suatu pengecualian. Dalam jawapannya, pemohon telah berhujah bahawa pertimbangan berasingan patut diberikan kepada keperluan untuk suatu ijazah undang-undang di bawah s 4(1)(cc) bagi penerimaan sebagai seorang peguambela dengan keperluan menjalankan latihan dalam kamar yang diperlukan di bawah s 4(1A)(a) kerana mereka merupakan dua perkara yang berbeza yang perlu dipertimbangkan.

Diputuskan, membenarkan permohonan itu:

Seksyen 4(1A) tidak bergantung kepada s 4(1) Ordinan itu dan memperuntukkan suatu kelayakan tambahan untuk penerimaan sebagai seorang peguambela selain daripada keperluan seksyen yang kedua itu. Seksyen 4(1A) tidak menyatakan bila seseorang itu harus memulakan latihannya dalam kamar bagi tujuan mengira tempoh 12 bulan di bawah s 4(1A)(a). Oleh itu, tempoh yang telah dihabiskan untuk menjalankan latihannya dalam kamar dari 3 May 1994 ke 12 Ogos 1994 seharusnya dikira bagi tujuan mengira tempoh 12 bulan yang diperlukan oleh s 4(1A)(a) Ordinan itu kerana pada tarikh itu beliau telahpun mencapai kelayakan akademik undang-undang. Tanpa suatu peruntukan yang nyata di dalam Ordinan itu, pemohon tidak seharusnya didenda kerana mengambil inisiatif untuk menjalankan latihan dalam kamar sebaik sahaja keputusan peperiksaannya diumumkan dan beliau berjaya, tetapi hanya belum dianugerahkan ijazahnya secara rasmi pada upacara konvokesyen.]

Notes

For cases on the period of pupillage, see 7 *Mallal's Digest* (4th Ed) paras 1298–1307.

Legislation referred to

Sarawak Advocates Ordinance (Cap 110) ss 4(1)(cc), (1A), (1B),

HC Sim (*Reddi & Co*) for the applicant.
Lim Heng Choo (Legal Officer) for the State Attorney General.
Frank Tang for the Sarawak Advocates Association.

Cur Adv Vult

Abdul Kadir Sulaiman J: The applicant is a law graduate from the University of Malaya. According to exh A to the affidavit in support of the application, affirmed on 4 January 1995, he passed the bachelor of laws degree with second class honours (upper division) on 20 April 1994. He was formally conferred with the degree only at the convocation held on 12 August 1994, a gap of slightly over three months. However, on 3 May 1994, soon after he obtained the result of the examination but before waiting for the conferment of the degree during the convocation, he commenced reading in the chambers of Mr Sim Hui Chuang of Messrs Reddi & Co Advocates, Kuching, a qualified practitioner under s 4(1A) of the Sarawak Advocates Ordinance (Cap 110) (hereinafter referred to as 'the Ordinance'). He continued to do so until the date of the filing of this application which was on 4 January 1995. By this application he applies that the period he spent reading in chambers from 3 May 1994 to 12 August 1994 be reckoned as part of the period of chambering for the purpose of s 4(1A)(a) of the Ordinance. However, if this cannot be so, he applies that he be granted exemption for this period or any other period as a special circumstance under s 4(1B) of the Ordinance.

Mr Lim Heng Choo for the State Attorney General objected to the reckoning of the ground that that period before the formal conferment of the degree could not be counted for the purpose of s 4(1A)(a) because the legislature clearly intended that a qualified person must be one conferred with the degree as stipulated by s 4(1)(cc). Therefore, unless the degree is conferred, even though he had passed the examination earlier, he could not start his chambering until he is so qualified. If he does so, that period should be ignored. As to the alternative application for exemption, Mr Lim says that there is no special circumstance shown as the applicant had not explained why it took the university that length of time after the passing of the examination to confer the degree upon him. Mr Frank Tang for the Sarawak Advocates Association supports the contention of Mr Lim that the applicant must be conferred the degree first before he is eligible to read in chambers. To him the delay by the university to formally confer the degree upon the applicant is administrative in nature and should not be the concern of the court when hearing this application. He goes further to say that if the applicant chose to do his chambering before he was qualified under s 4(1)(cc), the issue of exemption under s 4(1B)(a) would not arise at all. In other words, the applicant's earlier reading in chambers could not be a special circumstance. In reply, Mr Sim Hui Chuang for the applicant

submitted that separate consideration should be given between the qualification required under s 4(1)(cc) and that under s 4(1A)(a) as they are distinct matters for consideration.

The issue, therefore, is whether the period the applicant spent reading in chambers after the passing of the examination but before the conferment of the degree of bachelor of laws by the University of Malaya, is a period to be taken into consideration for the purpose of calculating the 12-month period under s 4(1A)(a) of the Ordinance.

Section 5 of the Ordinance requires a person to apply to the Chief Justice in order to be admitted as an advocate under the Ordinance. He is to satisfy the Chief Justice that he is a qualified person to be so admitted. Various requirements are spelt out in the Ordinance as conditions precedent to be so qualified to be admitted. In the case of the applicant, first is the requirement of s 4(1)(cc) that he has been conferred the degree of bachelor of laws by the University of Malaya. Secondly is the requirement of s 4(1A)(a) that he has been a pupil or read in the chambers of an advocate who has been lawfully practising in Malaysia for a period of not less than five years immediately prior to the applicant becoming his pupil or commencing to read in his chambers for a period of not less than 12 months. However, if he does not have the 12-month qualification, the period may be shortened provided he had been exempted from the whole or part of the 12-month chambering period if there are special circumstances justifying the exemption. Thirdly, he must satisfy the Chief Justice of the conditions required by s 4(2) of the Ordinance.

There is no quarrel as regards the first condition precedent because on 12 August 1994, the applicant has been conferred with the degree of bachelor of laws by the University of Malaya. The only problem is that for the purpose of s 4(1A), he wants the period he spent reading in chambers before he was so conferred with the degree to be counted for the purpose of calculating the 12-month period he is required by the sub-section to fulfil. Ordinarily, a person will start his chambering only upon the conferment of the required degree. But in the case of the applicant, he started doing so soon after his examination result was announced without waiting to be conferred with the requisite degree.

Section 4(1A), to my mind, is independent of s 4(1) of the Ordinance as providing another additional qualification for admission as an advocate over and above the requirement of the latter subsection. Section 4(1A) is silent as to when a person should commence to be a pupil or to read in chambers of a practising advocate of requisite experience for the purpose of calculating the necessary 12-month period under sub-sub-s (a). Though an independent provision, it is not the intention of the legislature to expect any person at all to commence pupillage or reading in chambers even before he embarks on his legal education or even after embarking on such education, but before he passes the examination in respect of such education. However, once the result of his examination is announced and he is successful in the examination but for the formal conferment of the degree upon him at a convocation ceremony which normally takes place at a later

A date depending on the convenience of the university authority, in the absence of an express provision in the Ordinance, I do not think that he should be penalized for having taken the initiative to be a pupil or to read in the chambers of a practising advocate of requisite experience for the purpose of acquiring the 12-month period required by s 4(1A)(a) to
B support his application for admission as an advocate. In the circumstances, I am of the view that the period spent by the applicant doing his chambering with Mr Sim Hui Chuang of Messrs Reddi & Co Advocates, Kuching from 3 May 1994 to 12 August 1994 should be counted for the purpose of calculating the period of 12 months required by s 4(1A)(a) of the Ordinance as by that date he had attained his academic qualification in law.

C Perusing the various provisions of the Ordinance, I am of the view that the intention of the legislature, particularly that of s 4(1)(and (1A) is that a person to be admitted to practise law in Sarawak should not only have the necessary academic qualifications by the conferment of the necessary degree upon him but should also have practical experience
D fitting him to deal with every kind of legal work with which an advocate and solicitor of this court has the right to deal and with which he holds himself out to the public, by the fact of his admission, as being professionally competent to deal. Looking at the assignments given to the applicant by his master during the period of his chambering as contained in his affidavit in support, I am satisfied that they are of the type of practical work which
E would prepare him to enable him to deal with every kind of legal work which is required of an advocate and with a further period of chambering making a total of 12 months in all, will make him professionally competent to deal with upon being admitted as an advocate. In any event, the type of chambering work he did before the formal conferment of the degree upon
F him is not at all in issue before me now.

In the circumstances, I would hold that the period spent by the applicant in doing his chambering from 3 May 1994 should be counted for purpose of s 4(1A)(a) of the Ordinance. In that light, the issue of exemption under s 4(1B)(a) does not arise.

G *Order accordingly.*

Reported by Anne Khoo

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